

DC-16-02198 - MCKINNEY SQUARE PROPERTIES NO. 1 LTD. vs. SENECA
INSURANCE COMPANY, INC., et al

Case Number: DC-16-02198
File Date: 02/25/2016
Case Status: OPEN

Court: 116th District Court
Case Type: CNTR CNSMR COM DEBT

PLAINTIFF : MCKINNEY SQUARE PROPERTIES NO. 1 LTD.
Address:
2723 FAIRMOUNT
DALLAS TX 75201

Active Attorneys
Lead Attorney:
SHAW, EVAN LANE (VAN)
Retained
Work Phone: 214-754-7110
Fax Phone: 214-754-7115

DEFENDANT : SENECA INSURANCE COMPANY, INC.
Address:
PO BOX 12079
AUSTIN TX 78711

Active Attorneys
Lead Attorney:
AVERY, CHRISTOPHER H
Retained
Work Phone: 713-403-8210
Fax Phone: 713-403-8299

DEFENDANT : LEVELFIRST LLC
Address:
ROBIN STOUGH
2302 CLEARSPRING DRIVE
IRVING TX 75063

DEFENDANT : WALDMAN BROS LLP
Address:
PO BOX 12079
AUSTIN TX 78711

DEFENDANT : LEVELFIRST LLC
Address:
ROBIN STOUGH
IRVING TX 75063

Active Attorneys
Lead Attorney:
SCHELLHAMMER, RICHARD E
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Work Phone: 817-885-7529
Fax Phone: 817-439-9921

02/25/2016 NEW CASE FILED (OCA) - CIVIL
02/25/2016 ORIGINAL PETITION
CORT Ltr2 Ct-Petition.pdf

PLED Petition.pdf

Comment: Petition

02/25/2016 CASE FILING COVER SHEET

PLED Civil Case Info Sheet.pdf

Comment: Civil Case Info Sheet

02/25/2016 ISSUE CITATION

ISSUE CITATION

02/25/2016 ISSUE CITATION COMM OF INS OR SOS

ISSUE CITATION COMM OF INS OR SOS

ISSUE CITATION COMM OF INS OR SOS

02/25/2016 JURY DEMAND

JURY DEMAND

02/25/2016 REQUEST FOR SERVICE

CORT Ltr2 Ct-Citations Sec State.pdf

Comment: Request

02/29/2016 CITATION SOS/COI/COH/HAG

Anticipated Server: ATTORNEY

Anticipated Method:

Actual Server: OUT OF COUNTY

Returned: 03/17/2016

Anticipated Server: ATTORNEY

Anticipated Method:

Actual Server: OUT OF COUNTY

Returned: 03/17/2016

Comment: ATTY/DC

02/29/2016 CITATION

Anticipated Server: ATTORNEY

Anticipated Method:

Actual Server: PRIVATE PROCESS SERVER

Returned: 03/04/2016

Comment: ATTY/DC

03/04/2016 CORRESPONDENCE - LETTER TO FILE

CORT Ltr2 Ct-Proof LEVELFIRST.pdf

Comment: CORT Ltr2 Ct-Proof LEVELFIRST

03/04/2016 RETURN OF SERVICE

LEVELFIRST LLC - CITATION

Comment: AFFI Affidavit of Service - LEVELFIRST

03/17/2016 CORRESPONDENCE - LETTER TO FILE

CORT Ltr2 Ct-Proof SENECA WALDMAN.pdf

Comment: CORT Ltr2 Ct - Proof SENECA WALDMAN

03/17/2016 RETURN OF SERVICE

SENECA INSURANCE COMPANY, INC. - CITATION SOS/COI/

Comment: AFFI Affidavit of Service - SENECA

03/17/2016 RETURN OF SERVICE

WALDMAN BROS LLP - CITATION SOS/COI/COH/HAG

Comment: AFFI Affidavit of Service - WALDMAN

03/28/2016 ORIGINAL ANSWER - GENERAL DENIAL

Levelfirst LLC's Original Answer

04/05/2016 ORIGINAL ANSWER - GENERAL DENIAL

McKinney Square - State Court Answer.pdf



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CORT Ltr2 Ct-Petition.pdf

PLED Petition.pdf

PLED Civil Case Info Sheet.pdf

JURY DEMAND

CORT Ltr2 Ct-Citations Sec State.pdf

ISSUE CITATION COMM OF INS OR SOS

ISSUE CITATION COMM OF INS OR SOS

ISSUE CITATION

CORT Ltr2 Ct-Proof LEVELFIRST.pdf

LEVELFIRST LLC - CITATION

CORT Ltr2 Ct-Proof SENECA WALDMAN.pdf

WALDMAN BROS LLP - CITATION SOS/COI/COH/HAG
Levelfirst LLC's Original Answer
McKinney Square - State Court Answer.pdf

CIVIL CASE INFORMATION SHEET DC-16-02198

FILED
DALLAS COUNTY
2/25/2016 11:05:17 AM
FELICIA PITRI
DISTRICT CLERK

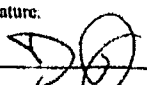
CAUSE NUMBER (FOR CLERK USE ONLY):

COURT (FOR CLERK USE ONLY):

STYLED McKinney Square Properties No. 1, Ltd. v. Seneca Insurance Company, Inc, et al

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: <u>David Welch</u> Address: <u>2723 Fairmount</u> City/State/Zip: <u>Dallas, TX 75201</u> Signature:  Email: <u>david@shawlaw.net</u> Telephone: <u>214-754-7110</u> Fax: <u>214-754-7115</u> State Bar No: <u>24098593</u>		Names of parties in case: Plaintiff(s)/Petitioner(s): <u>McKinney Square Properties No. 1, Ltd.</u> Defendant(s)/Respondent(s): <u>Seneca Insurance Company, Inc.</u> <u>Levelfirst, LLC, and Waldman Bro</u> <u>LLP</u> (Attach additional page as necessary to list all parties)	Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):				
Civil		Family Law		
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability <input type="checkbox"/> List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input checked="" type="checkbox"/> Other: Negligence			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax: _____	Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			
3. Indicate procedure or remedy, if applicable (may select more than 1):				
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover		
4. Indicate damages sought (do not select if it is a family law case): <input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input checked="" type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000				

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**LEVELFIRST LLC
BY SERVING ITS REGISTERED AGENT ROBIN STOUGH
2302 CLEARSPRING DRIVE NORTH
IRVING TX 75063**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **116th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **MCKINNEY SQUARE PROPERTIES NO. 1 LTD.**

Filed in said Court **25th day of February, 2016** against

LEVELFIRST LLC ET AL

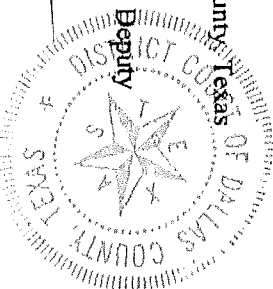
For Suit, said suit being numbered **DC-16-02198**, the nature of which demand is as follows:
Suit on **CNTR CNSMR COM DEBT** etc. as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: **FELICIA PITRE**, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office this **29th day of February, 2016.**

ATTEST: **FELICIA PITRE**, Clerk of the District Courts of Dallas, County Texas.

By 
DIANNE COFFEY



03-02-16 04:05 PM

ATTY

CITATION

DC-16-02198

**MCKINNEY SQUARE
PROPERTIES NO. 1 LTD.**

vs.

**SENECA INSURANCE
COMPANY, INC.,
ET AL**

ISSUED THIS

29th day of February, 2016

**FELICIA PITRE
Clerk District Courts,
Dallas County, Texas**

By: DIANNE COFFEY, Deputy

**Attorney for Plaintiff
EVAN LANE (VAN) SHAW
2723 FAIRMOUNT ST
DALLAS TX 75201
214-754-7110**

NO. DC-16-02198

Angie Avina

MCKINNEY SQUARE PROPERTIES NO. 1 LTD.	§	IN THE DISTRICT COURT
	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
SENECA INSURANCE COMPANY, INC.;	§	
LEVELFIRST, LCC; WALDMAN BROS.	§	
L.L.P	§	____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now MCKINNEY SQUARE PROPERTIES NO. 1 LTD. ("Plaintiff") complaining of SENECA INSURANCE COMPANY, INC.; LEVELFIRST, LCC; WALDMAN BROS. L.L.P; referred to herein as Defendants, and for cause of action would respectfully show unto the Court the following:

I.
PARTIES

1. Plaintiff is a Texas limited company.
2. Defendant SENECA INSURANCE COMPANY, INC (referred to herein as "SENECA") is a foreign insurance company conducting business in Dallas County, Texas but does not have a registered agent on file with the state of Texas. As such, SENECA should be served through the Texas Secretary of State at P.O. Box 12079 Austin, Texas 78711-2079.
3. Defendant LEVELFIRST, LLC (referred to herein as "LEVELFIRST") is a Texas limited company conducting business in Dallas County, Texas and may be served through its registered agent Robin Stough at 2302 Clearspring Drive North, Irving, Texas 75063.
4. Defendant WALDMAN BROS., LLP (referred to herein as "WALDMAN") is a Texas limited Partnership conducting business in Dallas County, Texas but does not have a

registered agent on file with the state of Texas. As such, WALDMAN should be served through the Texas Secretary of State at P.O. Box 12079 Austin, Texas 78711-2079.

II.
DISCOVERY LEVEL

5. Discovery is intended to be conducted under Discovery Control Plan Level 3 as set forth in the Texas Rules of Civil Procedure.

III.
JURISDICTION & VENUE

6. This court has jurisdiction over the Defendants because they have either conducted business in Texas, committed a tort in Texas, or have had continuous contracts with Texas, In addition, the damages that Plaintiffs bring suit exceed \$250,000 which is above the minimum jurisdictional limits of this court.
7. Venue is proper in Dallas County, Texas pursuant to Section 15.002 of the Civil Practice & Remedies Code.

IV.
CAPACITY OF PLAINTIFF

8. The Plaintiff is a direct beneficiary and/or a third-party beneficiary to the insurance policy made the basis of this suit and entitled to all rights and benefits afforded by the law and the insurance policy in issue.

V.
STATEMENT OF FACTS

9. Upon information and belief, Plaintiff asserts the following Statement of Facts which, in addition to other facts, supports Plaintiff's causes of actions set out herein.
10. Plaintiff would show that Plaintiff is a named insured under an insurance policy issued by Defendant SENECA. Plaintiff purchased the insurance policy through its insurance agent

Defendants WALDMAN BROS and Insurance Broker LEVELFIRST. The insurance policy was at all times material to this action in full force and effect. Plaintiff made a claim for property damage to Plaintiff's property located at 4501 Westway Avenue Dallas, Texas 75205. Defendant SENECA failed to timely or properly adjust the same and failed to fully honor the claim as required. If Plaintiff is not fully insured for the damage to Plaintiff's property, then Defendants LEVELFIRST and WALDMAN BROS failed to provide the insurance Plaintiff desired. Defendants SENECA, LEVELFIRST, and WALDMAN BRO's actions/inactions alleged herein, proximately caused Plaintiff's damages in an amount in excess of the minimum jurisdictional limits of the Court as set forth herein.

VI.
AGENCY

11. Plaintiff incorporates by reference and re-alleges all allegations of this Petition and would further show that at all times herein, Defendants acted by and through their agents, servants and representatives, each acting within the course and scope of his employment.

VII.
CAUSES OF ACTION AGAINST DEFENDANTS

Count A – Negligence

12. Plaintiff incorporates by reference and re-alleges all allegations of this Petition and would further show that the occurrence made the basis of this lawsuit referred to in this Petition and Plaintiff's resulting damages were proximately caused by the negligent acts or failures to act of Defendants.

13. Negligence requires:

- a. Defendants owed a legal duty to the Plaintiff.
- b. Defendants breached the duty.
- c. The breach proximately caused the Plaintiff's injury.

14. Defendants' negligence proximately caused the occurrence made the basis of this action and Plaintiff's damages in excess of the minimum jurisdictional limits of the Court.

X.

DISCOVERY RULE

15. Plaintiff incorporates by reference and re-alleges all allegations of this Petition and would further show that Plaintiff did not discover, and should not, in the exercise of reasonable diligence, have discovered, the occurrence of the negligent, false, fraudulent, misleading or deceptive acts, breach of warranty, fraudulent concealment or unconscionable actions and courses of action alleged in this Petition prior to the applicable statutory time frame for bringing suit and such suit was therefore timely filed. Plaintiff's injuries were inherently undiscoverable and are objectively verifiable.

XI.

DAMAGES

16. Plaintiff incorporates by reference and re-alleges all preceding sections of this Petition and would further show that Plaintiff seeks any and all damages whatsoever and including, but not limited to actual, punitive, exemplary, and statutory damages, available and recoverable under statute and common law resulting from the actions of Defendants supporting Plaintiff's damages. Plaintiff seeks monetary relief over \$250,000.00 but not more than \$1,000,000.00 at present. However, as discovery progresses, the claim could be over \$1,000,000.00.

XII.
PREJUDGMENT/POST-JUDGMENT INTEREST

17. Plaintiff incorporates by reference and re-alleges all allegations of this Petition and would show that many of its damages may be determined by known standards of value and accepted rules of interest as damages during the period beginning on the 180th day after the date Defendants received notice of the claim or on the day suit was filed, whichever occurred first, and ending on the day preceding the date judgment is rendered, or as the Court otherwise directs, calculated at the legal rate, or as otherwise set by the Texas Finance Code, any statute, or the common law.

XIII.
NOTICE/CONDITIONS PRECEDENT

18. All conditions precedent necessary to maintain this action have been performed or have occurred. Alternatively, Defendants have wholly waived and are estopped to assert all rights to any conditions precedent.

XIV.
ALTERNATIVE PLEADING

19. All pleadings herein, if inconsistent, are made pursuant to Rule 48 of the Texas Rules of Civil Procedure.

XV.
NOTICE OF INTENT

20. Plaintiff hereby gives notice of intent to utilize items produced in discovery in the trial of this matter and the authenticity of such items is self-proven per the Texas Rules of Civil Procedure 193.7.

XVI.
JURY DEMAND

21. Plaintiff demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be duly cited to appear and answer herein, and that upon final trial before a jury hereof, Plaintiff recover judgment against the Defendants, jointly and severally, for the following:

1. Judgment against Defendants for actual damages;
2. Pre-judgment interest;
3. Post-judgment interest;
4. Costs of Court;
5. Litigation expenses, including expert fees, costs for copies of depositions, copy costs, costs of court, etc.
6. Judgment for all the other relief to which Plaintiff deems itself entitled at law or in equity.

Respectfully submitted,



EVAN LANE (VAN) SHAW
Bar Card No. 18140500
JANET R. RANDLE
Texas Bar No. 00792216
COLLEN MEYER
Bar Card No. 24074709
DAVID WELCH
Bar Card No. 24098593
LAW OFFICES OF VAN SHAW
2723 Fairmount
Dallas, Texas 75201
Telephone: (214) 754-7110
Facsimile: (214) 754-7115
van@shawlaw.net
janet@shawlaw.net
collen@shawlaw.net
david@shawlaw.net

ATTORNEYS FOR PLAINTIFF

CAUSE NO. DC-16-02198

MCKINNEY SQUARE PROPERTIES NO.1, LTD.	§	IN THE DISTRICT COURT OF
	§	
	§	
Plaintiff,	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
SENECA INSURANCE COMPANY, INC.;	§	
LEVELFIRST, LLC; WALDMAN BROS.	§	
L.L.P.,	§	
	§	
Defendant.	§	116TH JUDICIAL DISTRICT

**SENECA INSURANCE COMPANY, INC.'S
ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant SENECA INSURANCE COMPANY, INC. ("Seneca" or "Defendant") files this, its Original Answer and would respectfully show as follows:

I. ORIGINAL ANSWER

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies the allegations contained within Plaintiff's Original Petition and demands strict proof thereon by a preponderance of the credible evidence in accordance with the laws of the State of Texas.

**II. SPECIAL EXCEPTIONS
Failure to State a Claim Against Defendants**

Seneca specially excepts to Plaintiff's Original Petition because it fails to state a claim upon which relief can be granted. Specifically, Plaintiff fails to describe how Seneca's alleged failure to properly adjust and honor an insurance claim supports Plaintiff's cause of action against Seneca for negligence. Plaintiff's petition instead merely recites the elements of a negligence cause of action and generically alleges that Defendant is liable for same.

Plaintiff has not identified any facts regarding any duty owed to Plaintiff by Seneca, any breach of that duty by Seneca, or damages caused by Seneca's breach. Absent any specific factual allegations of negligence in Plaintiff's Original Petition, the petition does not support a claim upon which relief can be granted.

Additionally, Plaintiff's Original Petition generically alleges that Seneca failed to timely or properly adjust Plaintiff's claim, but fails to state any facts showing what was untimely or improper about Defendant's investigation and what specifically was improperly done or not done by Seneca.

Accordingly, Plaintiff should be required to file an amended pleading which sets forth facts and evidence in support of Plaintiff's claims for alleged negligence by Seneca.

III. PRAYER

WHEREFORE, Defendant SENECA INSURANCE COMPANY, INC. respectfully prays that Plaintiff takes nothing by this suit herein, that Defendant goes hence with its costs and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Christopher H. Avery

James N. Isbell

Attorney-in-Charge

Bar No. 10431900

jisbell@thompsoncoe.com

Christopher H. Avery

Bar No. 24069321

cavery@thompsoncoe.com

One Riverway, Suite 1400

Houston, Texas 77056

Telephone: (713) 403-8210

Facsimile: (713) 403-8299

**COUNSEL FOR DEFENDANT
SENECA INSURANCE COMPANY, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2016, a true and correct copy of the foregoing instrument was served pursuant to the Texas Rules of Civil Procedure on the following counsel and parties of record:

Evan Lane (Van) Shaw
Janet R. Randle
Collen Meyer
David Welch
LAW OFFICES OF VAN SHAW
2723 Fairmont
Dallas, Texas 75201
Telephone: (214) 754-7110
Facsimile: (214) 754-7115
van@shawlaw.net
janet@shawlaw.net
colleen@shawlaw.net
david@shawlaw.net

**COUNSEL FOR PLAINTIFF
MCKINNEY SQUARE PROPERTIES NO. 1 LTD.**

/s/ Christopher H. Avery
Christopher H. Avery

II.

Special Denials

Levelfirst specifically denies it owes any duty to Plaintiff whatsoever and further denies it breached a duty, if one is found.

Affirmative Defenses

III.

By way of affirmative defense, Levelfirst would show that Plaintiff's own acts or omissions proximately caused or contributed to Plaintiff's damages; thus, Defendant Levelfirst is entitled to a determination of the percentage of Plaintiffs' responsibility, pursuant to Texas Civil Practice & Remedies Code§ 33.001 through§ 33.003 and to have its liability, if any, reduced or barred in proportion to such percentages of responsibility as may be found by the trier of fact and allocated to Plaintiff.

GENERAL DENIAL

IV.

Defendant Levelfirst exercises the right granted to it by law to file a general denial and to require Plaintiff to prove all material facts alleged in its Original Petition and therefore, Defendant Levelfirst denies all and singularly the allegations in Plaintiffs' Original Petition and of this puts himself on the country.

WHEREFORE, PREMISES CONSIDERED, Defendant Levelfirst prays that Plaintiff take nothing by its suit, that judgment be entered dismissing the claims against Levelfirst and awarding Defendant Levelfirst attorneys' fees and costs of Court and for such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

/s/ Richard E. Schellhammer

Richard E. Schellhammer
State Bar No. 17736860
Cara D. Kennemer
State Bar No. 24036489
UNDERWOOD LAW
1008 Macon Street, Suite 101
Fort Worth, Texas 76102
(817) 885-7529
(817) 977-5902 (Fax)
Attorneys for Defendant,
LEVELFIRST, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent by United States mail, postage prepaid, certified mail, return receipt requested, to Counsel for Plaintiff, and first class mail to all other counsel of record, pursuant to Rule 21a of the Texas Rules of Civil Procedure, on this the 28th day of March, 2016.

/s/ Richard E. Schellhammer

Richard E. Schellhammer